

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO.6 OF 2023**

SUNIL Y. GUDLAR AND ANR ... Applicant.
VS
STATE OF GOA THR. P.I. ANTI
CORRUPTION BRANCH AND ANR ...Respondents.

Mr. S. Hegde and Mr. G. Naik, Advocate for the Applicant.

Mr. S. G. Bhobe, Addl. Public Prosecutor for the Respondents.

**CORAM: M. S. KARNIK, J
DATED: 20th June 2023**

ORAL ORDER

1. Heard Mr. Hegde, learned counsel for the applicant. The proceedings are under the provisions under Section 13(2) of the Prevention of corruption Act 1988("the Act" for short). The order impugned is passed by the trial Court on 12.8.2022. The learned Public Prosecutor had submitted before the trial Court, based on the materials on record, that charge be framed against the accused/ applicant. The accused prayed for discharge on the strength of the submissions which have been recorded by the trial Court and after placing reliance on the law laid down by the Apex Court in support of the plea for discharge. The trial Court by the impugned order directed the charge be framed against the accused under Section 13(2) of the Act.

2. Apart from the other submissions advanced by Mr. Hegde, one of the submission is in respect of an application preferred by the applicant under section 91 of the Cr.P.C. requesting that documents mentioned in the said application be produced, which according to the learned counsel are essential and necessary for just and fair decision in the case and in the interest of justice. The said application was made on 26.5.2022 with the prayer that trial Court may exercise the power under section 91 of Cr.P.C. to summon the documents from the Banks and other Public authorities as shown in the enclosed annexures. My attention is invited to the roznama to demonstrate that the said application (Exh.D-35) came up for consideration before the trial Court.

3. Learned counsel submitted that the documents mentioned in the said application were of sterling quality which would have an important bearing on the application for discharge. Reliance is placed on the decision of the ***Harshendra Kumar D VS Rebatilata Koley and others,(2011) 3 SCC 351*** in support of the submissions advanced by the learned Counsel for the applicant. It was urged by the learned counsel for the applicant that in the facts of the present case, the trial Court ought to have decided the application filed by the applicant under Section 91 at Exh. D-35 which has an important bearing on the plea of discharge before proceeding to frame the charges against the applicant.

4. Mr. S. G. Bobe, learned Public Prosecutor, on the other hand opposed this application and argued in support of the impugned order. It is submitted that the applicant has no right to file such an application (Exh. D-35) at the stage of framing of the charges. It is submitted that the trial Court has after taking into consideration the materials on record was justified in *prima facie* coming to the conclusion that the charges need to be framed.

5. I have heard learned counsel for the parties.

6. Right at the outset, it is necessary to note the observations of the Supreme Court in the case of **Harshendra Kumar** (supra). In paragraphs 24, 25 and 26 their Lordships observed thus:-

24. *In Awadh Kishore Gupta [(2004) 1 SCC 691 : 2004 SCC (Cri) 353] this Court while dealing with the scope of power under Section 482 of the Code observed: (SCC p. 701, para 13)*

“13. It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 of the Code, it is not permissible for the court to act as if it was a trial Judge.”

25. *In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents — which are beyond suspicion or doubt — placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on*

the matter at prima facie stage.

26. *Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to the appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company.*

(emphasis supplied)

7. Having gone through the above observations of their Lordships, it requires to be kept in mind that criminal prosecution is a serious matter as it affects the liberty of a person. Thus, the Supreme Court held that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in an appropriate case can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under section 397 of the Code. Of course it is not proper to consider the defence of the

accused or embark upon an enquiry in respect of the merits of the accusation. The Supreme Court held that in a appropriate case, if on the face of the documents-- which are beyond suspicion or doubt-- placed by the accused, the accusation against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial Court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at *prima facie* stage.

8. In the present case, an application is moved before the trial Court by the accused under Section 91 of the Cr.P.C. Section 91 reads thus:-

*91 Summons to produce document or other thing.
(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or*

order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

9. It is seen from the roznama that the application(Exh. D-35) had come up for consideration before the trial Court on an earlier occasion. The impugned order in paragraph 14 did make a reference to the decision of the Supreme Court in the case of ***Rukmini Narvekar Vs Vijaya Satardekar (2009) AIR SCW 118***, and the argument made by the learned counsel for the applicant that documents produced by the accused can be considered at the stage of framing of charge. The learned Judge however proceeded to frame charge, as in his opinion, the materials produced along with the chargesheet are sufficient to frame the charge against the accused. A reading of the impugned order indicates that the application under Section 91 of the Cr.P.C was not taken into consideration. In my

opinion, undoubtedly charge can be framed on the basis of the materials produced along with the chargesheet if the same are sufficient to frame a charge. I really cannot find any fault with this approach of the learned Judge. Nonetheless, if an application made under Section 91 of Cr.P.C. was already on record, the trial Court could have looked into the application for the limited purpose of testing whether the same has any significant bearing on the matter. It is obviously for the trial Court to consider whether the application is meritorious or otherwise and if at all the same is to be entertained, the consequences thereof having regard to the other materials on record before proceeding to frame charges. At a *prima facie* stage, the application could have been looked into. It is for the applicant/accused to satisfy the trial Court that the application Exh. D-35 be decided before framing of charge. The trial Court to decide the application uninfluenced by the observations made by me.

10. The impugned order dated 12.8.2022 is set aside. The matter is remitted to the trial Court for considering the aspect of framing charge afresh after hearing all concerned. All contentions are kept open.

11. Parties to appear before the trial Court on 1.9.2023 which is the next date of hearing before the trial Court along with a copy of this order.

12. Criminal Revision Application stands disposed of accordingly.

M. S. KARNIK J.

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